

REMARKS

Reconsideration of this patent application is respectfully requested in view of the foregoing amendments, and the following remarks.

In the Office Action, the Patent Examiner has requested that nonelected claims 16 to 28 be cancelled from the application. Hence, claims 16 to 28 have been cancelled in accordance with the Patent Examiner's request.

The Patent Examiner has objected to claims 48 to 51 and 58 to 60 under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. More specifically, the Patent Examiner believes the following features are not found in the present application:

- a) Providing a pair of finger assemblies and moving the finger assemblies up, over, and down over the top edges of the bag (claim 48);
- b) Moving the bag toward the sealing apparatus while the finger assemblies are moving away from each other (claims 50 and 60);
- c) Grasping the opposed top edges of the bag with a pair of grabber arms (claim 48);

- d) Pulling the grasped top edges of the bag apart (claim 48)
- e) Moving the finger assemblies away from each other to close the opening of the bag (claims 49 and 59);
- f) Pulling the grasped edges of the bag apart while delivering the bag to a sealing apparatus (claim 51); and
- g) Grasping the opposed top edges of the bag with a pair of finger assemblies that move inwardly and down to grasp the top edges of the bag (claim 58).

In the Office Action, the Patent Examiner submits that page 11, lines 14 to 31, and Figure 7(h) teach only that the inner fingers 67 of the present invention are capable of moving outwardly from each other to meet the respective outer fingers 62 to clampingly engage a bag 46 but that the disclosure does not teach or support "grasping the opposed top edges of the bag with a pair of grabber arms". The Patent Examiner also submits that since the bag is not grasped by the gripper arms, the step of pulling the grasped top edges is not supported.

It is respectfully pointed out that it is acknowledged by the Patent Examiner that claims 48 to 51 and 58 to 60 are exact copies of claims 20-23 and 30-32 of the *U.S. Patent No. 6,550,226*

to *Gates et al.* It is submitted that in comparison to the *Gates et al.* reference, the phrase "grasping the opposed top edges of the bag with a pair of grabber arms" is identical to the step as described on page 11, lines 14 to 31, and in Figure 7(h) of the present application. More specifically, the Patent Examiner's attention is drawn to Figure 17 of the *U.S. Patent No. 6,550,226*, *Gates et al.* reference in which the bag 14 is clampingly engaged by fingers (128,134,132) on the grabber 114. Column 7, lines 24 to 42 clearly describes the grabber arms as movable upwardly, outwardly and downwardly, while lines 43-57, describe the finger assemblies as pivotable to grasp the top edges of the bag. Thus, within the context of the claim as set out in *Gates et al.*, the Applicant's invention functions in a similar manner as set out in the *Gates et al.* reference.

The Patent Examiner's assertion that the Specification does not disclose a step of "moving the finger assemblies up, over and down over the top edges of the bag" with the step of delivering the bag to the sealing apparatus is inconsistent with the position that the *Gates* reference has taken. This is namely that the arm assemblies move the finger assemblies which results in the simultaneous movement of both features. It is submitted that the finger assemblies of the *Gates et al.* reference also do not move up, over and down over the top edges of the bag per se,

but rather the grabber assemblies mounted on each arm are movable upwardly, overly and downwardly whereby the finger assemblies may only grasp the bag. This is similar to the disclosure of the present invention on page 12, lines 7-10 and lines 23-28, of the Specification and is illustrated in Figures 7(d)-(i).

The Patent Examiner further states that the gripper assembly of the present invention only retracts laterally, seen in Figure 7(i) to transfer the bag 46 longitudinally to the conveyor station 54. Again, as discussed on page 12 of the present Specification, in lines 23-28, it is disclosed that "Lateral reciprocating movement of the gripper assembly 50 relative to the carriage 52 is achieved by means of slidable movement of the beam 96 within the second sleeve 94, which in turn is driven by a pneumatic cylinder 98 linking the respective members. Vertical movement of the gripper assembly 50 is achieved by operation of the pneumatic cylinder 92". At page 13, line 26, the disclosure also reads as follows:"...As the hopper is discharging the commodity, the bag gripper assembly 50 advances laterally towards the hopper 28, seen in Figures 7(c)-(e), and subsequently downwardly, as seen in Figure 7(f),...". It is clear that the gripper assembly cannot possibly advance laterally and subsequently downwardly on a continuous basis and that at some point upward movement must be completed during the cycle. It

would be clearly understood to a person skilled in the art that the bag gripper assembly would in fact advance laterally towards the hopper 28. Then it would move subsequently, downwardly, such that the fingers of both the inner arms and the outer arms of the gripper assembly grasp the bag 46. Then they would laterally withdraw the bag from the area below the hopper before transferring the bag to the conveyor station and subsequently moving upwardly into position for the next commodity filled bag.

In light of the above explanation, it is clear items a), c) and d) identified by the Patent Examiner as not being disclosed by the present invention are in fact disclosed in a similar context to the *Gates et al.* reference.

Previously presented claims 50 and 60 have been cancelled from the present application for the purpose of expediting an interference in view of the comments by the Patent Examiner with respect to item b).

With respect to the Patent Examiner's position regarding claim 51, namely that the bag 46 is not grasped and pulled by the gripper arms 62 and 66 while the transferring step is conducted, the Applicant respectfully directs the Patent Examiner's attention to the fact that the present application discusses

drawing the bag taut before moving the bag to the sealing station. More specifically, page 14, lines 1-3, specifically describe gripping the opposed corners of the bag between the respective inner and outer fingers 64 and 67 and identify Figures 7(h) and Figure (i). One might argue that claim 51 intends to specify that the pulling of the grasped top edges of the bag apart occur simultaneously while delivering the bag to the sealing apparatus. However, it is respectfully drawn to the Patent Examiner's attention that claim 51 does not in fact state that the "pulling" is a specific movement occurring simultaneously. Rather, the claim states that the top edges of the bag are pulled apart, e.g. pulled taut, which is clearly taught in the present application. Hence, the Applicant believes that the subject matter of claim 51 is clearly supported by the present disclosure.

Turning now to claims 49 and 59, the Patent Examiner specified that the step of "moving finger assemblies away from each other" does not occur because the finger assemblies of the present invention are fixedly mounted to the gripper assembly. While this statement is true with respect to the outer arms, the Applicant respectfully points out that the inner arms are in fact movable relative to the outer arms of the gripper assembly 50. The movement of the inner arms relative to the outer arms is

clearly shown in Figures 2 and 3 and also in Figures 7(a) and 7(b). Finger assemblies 64 and 67 are described on page 11, lines 26 to 31 which states that "the inner arm 66 are each connected to a corresponding pneumatic cylinder 70 mounted to the base 60, with the cylinders adapted to drive the inner arm 66 between reciprocating converging and diverging port positions. The inner arm 66a reciprocate between a converged first position, shown in Figure 7(a), wherein the finger 67 of the inner arm 66 are spaced substantially apart from the finger 64 of the fixed outer arm 62 and the second diverged position shown in Figure 7(b), wherein the respective fingers 64 and 67 of the inner and outer arms meet to clampingly engage a bag 46 therebetween. Understandably, in order for inner and outer fingers 67, 64 to converge and diverge would require the movement of the inner arm fingers to move towards and away from each other. Thus, the Applicant submits that the step of moving finger assemblies away from each other to close the opening of the bag does occur in the present invention.

With respect to claim 58, the Patent Examiner states that the Applicant teaches at page 11, lines 14-31, that the finger assemblies are fixedly mounted to the gripper assembly and therefore they do not "move inwardly and down to grasp the top edges of the bag". However, similarly to claim 48, it is again

respectfully pointed out to the Patent Examiner that the finger assemblies identified in the *Gates et al.* reference also do not move "inwardly and down to grasp the top edges of the bag". Again, the Patent Examiner's attention is drawn to column 7, lines 44 to 57, of the *U.S. Patent No. 6,500,226* reference which discusses that the finger assemblies are simply pivotable and would not in fact be movable both "inwardly and down" without the assistance of the grabber assembly. One might argue that the claim language intended to specify that the finger assemblies move inwardly with respect to the bag. However, such an argument would simply support the Applicant's position that the finger assemblies of the Applicant's present application would also move inwardly with the assistance of the gripper assembly 50. Alternatively, finger assemblies do not in fact move laterally with respect to the top edges of the bag in the *Gates et al.* reference. Thus, the Applicant again submits that in the context of the teachings of the *Gates et al.* reference, the Applicant's previously presented claim 58 also falls within the scope of the Applicant's described invention.

The Patent Examiner has again rejected claims 48-51 and 58-60 under 35 U.S.C. 102(a) as being clearly anticipated by *Gates et al.* (U.S. 6,550,226). The Applicant would again like to respectfully point out to the Patent Examiner that the present

application is a divisional application and that, as set out on page 1 of the specification, this application claims priority under U.S.C. Section 120 of the *PCT/CA00/00114*, filed February 7, 2000 and also under U.S.C. Section 119 of Canadian Patent Application Number 2,262,276, filed on February 15, 1999. Thus, the present application clearly cannot be anticipated by the *U.S. 6,550,226, Gates et al.* patent, because February 15, 1999 is earlier than October 27, 1999 filing date of *Gates*.

For all these reasons, the present disclosure clearly supports all of the now pending claims. Thus, the present patent application is in complete compliance with all of the requirements of 35 U.S.C. 112. Withdrawal of this ground of rejection is respectfully requested.

Thus, the present invention is not anticipated under 35 U.S.C, Section 102. Withdrawal of this ground of rejection is respectfully requested. Hence, the Declaration of an

Interference proceeding is proper and is respectfully requested.

Respectfully submitted,

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Enclosure: Copy Petition One Month Extension of Time

I hereby certify that this correspondence is being deposited with the U.S. Postal Service as first class mail in an envelope addressed to: Commissioner of Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on February 14, 2005.


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